Supreme Court of the United States.

OCTOBER TERM, 1900.

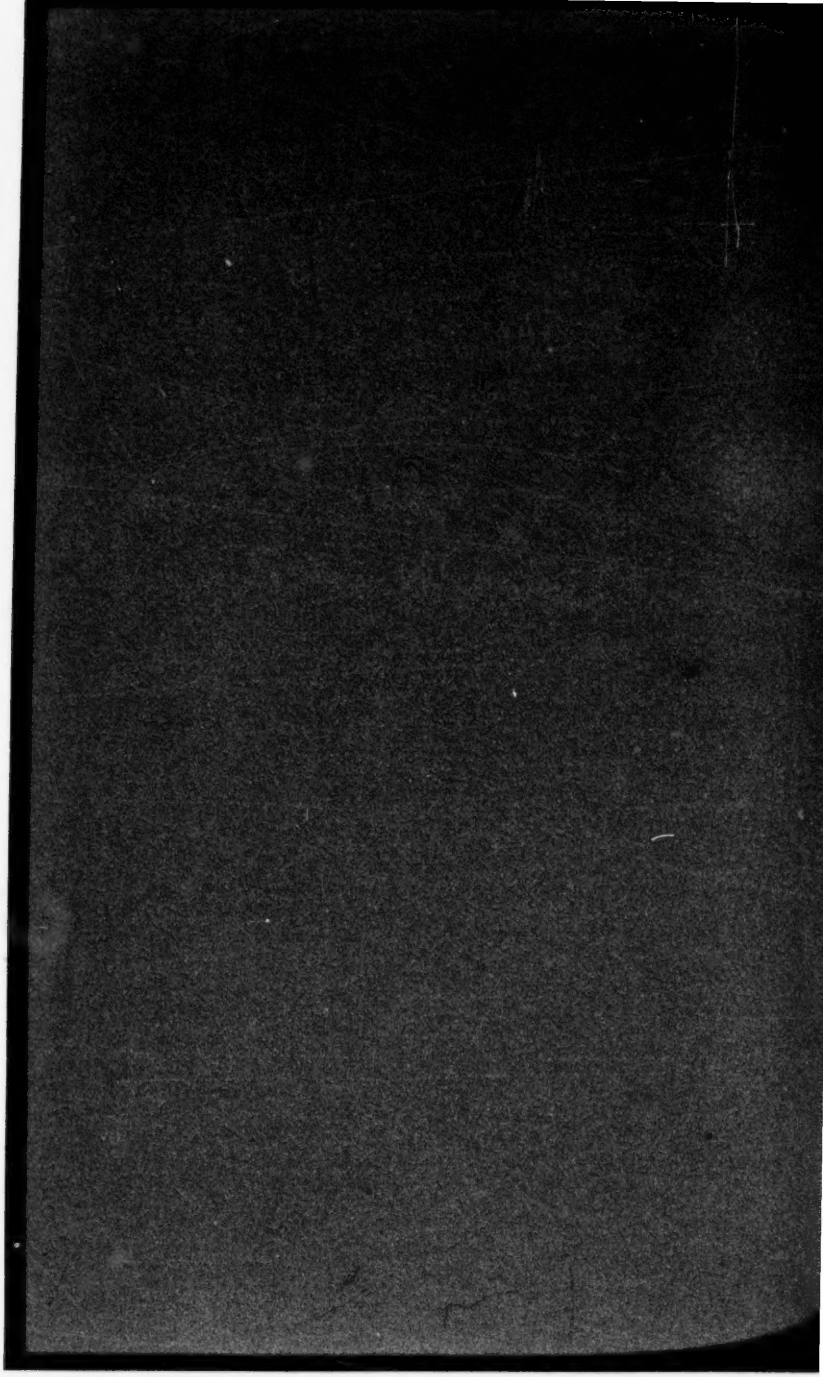
Original, No. .....

EX PARTE: IN THE MATTER OF RAMON BAEZ, Petitioner.

Motion for Leave to File and Petition for Writs of Habeas Corpus and Certiorari, to be Issued to the United States Provisional Court for the Department of Porto Rico and Samuel C. Reid-well, the Marshal Thereof.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
For the Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2-25-1900



IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

Original No. —.

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BAEZ, PETITIONER.

Application for Leave to File Petition for Writs of Habeas Corpus and Certiorari.

Now comes the above-named Ramon Baez, by his attorneys, and moves this honorable court for leave to file the accompanying petition for writ of *habeas corpus* and of *certiorari*, and to have the same entered upon the original docket of this court for the current term.

The grounds upon which such motion and application are based are set forth at length in the petition itself.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original, No. .....

EX PARTE: IN THE MATTER OF RAMON BAEZ,
PETITIONER.

Petition for Writ of Habeas Corpus and of Certiorari.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Ramon Baez, by Tulio Larrinaga, for him and in his behalf, respectfully shows that he is a native-born inhabitant of the island of Puerto Rico, formerly a dependency of the Kingdom of Spain, but at the time of the occurrences hereinafter narrated belonging to and forming a part of the territory of the United States of America.

Your petitioner was also formerly a subject of His Imperial Majesty the King of Spain, but since long prior to the occurrences herein complained of and ever since, to and including the present time, he has neither owed nor acknowledged allegiance to any other nation or sovereignty than that of the United States of America.

Your petitioner represents unto this honorable court that he is wrongfully, improperly, unjustly, and illegally imprisoned and restrained of his liberty at Humacoa, in and on said island of Puerto Rico, by one Samuel C. Bothwell, called and styled as and being the marshal of the United States provisional court for the department of Puerto Rico.

By act of Congress approved April 25, 1898, it was declared that a state of war had existed and then existed between the United States of America and the Kingdom of Spain, and thereafter, in the course of the prosecution of such war, the military forces of the United States invaded and conquered the island of Puerto Rico and have ever since remained in possession and control thereof.

December 10, 1898, a treaty of peace was signed at Paris, France, between the duly accredited representatives of the United States of America and Her Majesty the Queen Regent of Spain; and the same having been duly reported to the Senate of the United States, ratification thereof was advised by the Senate on February 6, 1899, and, having been ratified by the President of the United States on said date and subsequently by Her Majesty the Queen Regent of Spain, ratifications thereof were exchanged at Washington on the 11th day of April, 1899, and the treaty was proclaimed by the President of the United States on the same day.

By said treaty it was provided, among other things, as follows:

ART. II. "Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, * * *"

ART. XI. "All Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts,

and to pursue the same course as citizens of the country to which the courts belong."

Prior to the ratification of said treaty of peace and on or about the 12th day of August, 1898, a protocol or agreement between the United States and the Kingdom of Spain was signed at the city of Washington by the representatives of the two nations, under and by virtue of the terms of which a suspension of hostilities between said nations was declared by the President of the United States.

By article IV of the said protocol it was agreed that Spain should evacuate Porto Rico and that commissioners should be appointed by the signatory powers for the purpose of arranging and carrying out the details of such evacuation.

Thereafter an evacuation commission was appointed by the President of the United States, and a similar commission was appointed by the government of Spain, and the commissioners subsequently assembled in the city of San Juan, Porto Rico, and duly arranged the terms of such evacuation, which were accepted by the respective governments, and the evacuation and retirement of the Spanish forces from the island of Puerto Rico occurred on the 18th day of October, 1898.

Thereupon, and on said date, Major General John R. Brooke, commanding the forces of the United States, in compliance with the orders of the President, assumed the government of the said island of Porto Rico, and by General Order No. 1, of said date, established the military "Department of Puerto Rico."

Said order, among other things, contained the following:

"The provincial and municipal laws, in so far as they affect the settlement of private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed conditions of Porto Rico, in which event they may be suspended by the department commander."

Your petitioner further shows that after said 12th day of August, 1898, hostilities ceased to exist in the island of Porto Rico between the forces of the United States and of Spain, and that since the 11th day of April, 1899, war has ceased to exist between the nations, and also since the last-named date, if not prior thereto, there has been and is now a condition of peace existing throughout said island of Porto Rico, and there has been neither a state of war with any foreign power in the said island, nor has there been any internal or domestic rebellions, revolutions, or dissensions, nor any failure to recognize the authority and sovereignty of the United States.

Since the occupation of Porto Rico by the United States authorities the civil courts of that island have been in session exercising the same jurisdiction and in substantially the same form as during the Spanish occupation of the island, and such courts were exercising their ordinary civil and criminal jurisdiction during all of the times hereinafter mentioned.

On the 27th day of June, 1899, by General Order No. 88, of Brigadier General George W. Davis, United States Army, then commanding the department of Porto Rico, and the supreme military authority in said island, there was established a "United States Provisional Court for the Department of Porto Rico."

Said General Order 88, among other things, provides as follows:

"SEC. II. The judicial power of the provisional court hereby established shall extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution, and to all common-law offenses within the restrictions hereinafter specified."

"SEC. IV. The decisions of said court shall follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules and records shall conform as nearly as practicable to those observed and kept in said Federal courts. * * *

"SEC. V. The provisional court shall consist of three judges, one of whom shall be known as the law judge, and the other two as associate judges, one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff and janitor, and one messenger. The law judge shall preside and shall determine and decide all technical questions of law. A majority vote of the bench shall determine all questions of fact. The jury system may be introduced or dispensed with in any particular case in the discretion of the court.

"SEC. VI. The judges of the provisional court shall be clothed with the powers vested in the judges of the circuit or district courts of the United States.

"SEC. VII. The district attorney shall be authorized to present to the court information against all parties for violations of United States statutes and regulations. He shall also in like manner present informations for violations of orders issued by the department commander relating to civil matters, which may be referred to him from these headquarters. * * *

"SEC. VIII. In order to define more clearly certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

"1st. All offenses punishable under the statutory laws of the United States, such as those indicated in paragraph I of this order;

"2nd. Offenses committed by or against persons, foreigners or Americans, not residents of this department, but who may be traveling or temporarily sojourning therein, or against the property of non-residents.

"3rd. Offenses against the person or property of persons belonging to the army or navy, or those committed by persons belonging to the army or navy, not properly triable by military or naval courts; but not including minor police offenses.

"4th. Offenses committed by or against foreigners or by or against citizens of another State, district or Territory of the United States, residing in this department."

"SEC. XI. If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such

judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree. But if at the end of said ninety days such process has not been issued by the Supreme Court execution shall forthwith issue."

"SEC. XVI. The court shall adopt an appropriate seal which shall be procured by the treasurer of the island. The clerk of the court shall have the custody of the seal for use in attesting legal documents in the usual manner.

"SEC. XVII. In accordance with the provisions of paragraph V of this order the following appointments are announced to take effect July 1st, 1899:

"To be law judge: Noah Brooks Kent Pettingill.

"To be provisional United States attorney: J. Marbury Keedy.

"The following officers are hereby detailed on the special duty set opposite their respective names:

"Major Eugene D. Dimmick, 5th U. S. cavalry.	Associate judges of the U. S. provisional court.
"Major Earl D. Thomas, 5th U. S. cavalry.	
"1st Lieutenant Robert Alexander, 11th U. S. infantry.	Clerk of the U. S. provisional court.

"Private Samuel C. Bothwell, troop D, 5th U. S. cavalry, is detailed on special duty as marshal of the U. S. provisional court."

By General Order 216 of said department, dated December 18, 1899, section XI of General Order 88, hereinbefore set forth, was amended so as to read as follows:

"If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted such party before the execution of such judgment or decree, upon the filing of a bond by him with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make ap-

plication to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree.

"For good cause, this court may extend the time of filing such application and record in the office of the clerk of the supreme or appellate court aforesaid.

"The stay of execution granted by this court shall be in force until the final disposition of the case by the supreme or appellate court aforesaid, provided that the party availing himself of the provisions of this section shall not be guilty of negligence in prosecuting his application before the said supreme or appellate court."

On the 21st day of September, 1899, by General Order 145 of said department, issued by Brigadier General George W. Davis, United States Army, as aforesaid, provision was made for the holding of municipal elections in said island of Porto Rico, and certain rules and regulations governing the right of the inhabitants to vote at such elections and the manner of exercising such suffrage were therein provided for, among others the following:

"SEC. V. An elector to vote at such elections shall possess the following qualifications:

"*a.* He must be a *bona fide* male resident of the municipality.

"*b.* He must be over twenty-one years of age.

"*c.* He must be a tax-payer of record at the date of his registration, or he must be able to read and write.

"*d.* He must have resided upon the island of Puerto Rico for two years next preceding the date of his registration, and for the last six months of said two years within the municipality where the election is held."

Thereafter, by General Orders 160 of said department, issued October 12, 1899, General Orders 145 were amended so as to read in part as follows:

"SEC. VIII. He must be a tax-payer of record in the municipality in which he votes at the date of this order, or he must be able to read and write. Persons who pay insular or municipal taxes of any kind, in their own right or name, or in the name of their lawful wife or minor child, or the members of a firm, corporation, or copartnership, paying taxes, and the heirs of an estate that pay taxes, are deemed tax-payers under the meaning of this clause. But administrators, guardians, trustees, agents, or other persons who pay taxes for other than themselves or their lawful family are not tax-payers within its meaning through such payment."

"SEC. XVI. Any person who fraudulently votes, or attempts or offers to fraudulently vote, or attempts to influence or control others to fraudulently vote, at any public election, shall, upon conviction thereof, be subject to a fine not exceeding one hundred dollars, or to imprisonment at hard labor not exceeding three months, or to both such fine and imprisonment, in the discretion of the court."

Thereafter, by special orders of the military authorities commanding the said department, an election was ordered to be held on the 31st day of October, 1899, in the city of Guayama, Porto Rico, for the election of the ordinary municipal officers of said city to fill the offices in the plan of civil government established by the military authority of the United States.

Your petitioner represents that, being duly qualified in accordance with law and the general orders aforesaid, he voted at said election for the candidates of the party to which he belonged, and thereafter, on or about the 10th day of November, 1899, he was arrested and taken into custody by one Samuel C. Bothwell, marshal of said United States Provisional Court of the Department of Porto Rico, and brought before said provisional court, and was there charged by the district attorney thereof, in an information or complaint which was read to him, with having illegally voted at the said election in the city of Guayama heretofore mentioned.

Your petitioner pleaded "Not guilty" to said charge, and thereafter said United States provisional court proceeded to try him for said alleged offense, although your petitioner objected to the jurisdiction of said court and denied that he had committed any crime or offense cognizable by said court, and further objected on the ground that no presentment or information had been returned by a grand jury, and further that he was deprived of a trial by jury in said cause, a jury trial having been demanded by him and refused by said court.

After hearing the evidence in said proceeding, said provisional court found your petitioner "Guilty," and sentenced him to imprisonment at hard labor in the jail of Humacao, Porto Rico, for a period of thirty days.

Thereupon, in accordance with the provisions of section XI of General Orders 88, as amended and heretofore referred to, your petitioner applied for a stay of execution of ninety days, to permit him to make application to this honorable court for a writ of *certiorari* or other suitable process, to review the action, and to set aside the judgment of said provisional court.

Such application was granted; and the time allowed under said section having expired, your petitioner has been taken into custody by the said Samuel C. Bothwell, marshal as aforesaid, and is by him now unlawfully restrained of his liberty and compelled to perform infamous tasks.

The proceedings of said United States provisional court are set forth at large in the duly certified copy of the transcript of the record in said court submitted herewith.

Your petitioner further alleges that he is advised that said United States Provisional Court for the Department of Porto Rico had no jurisdiction or lawful authority under the Con-

stitution and laws of the United States to cause the arrest of your petitioner or to proceed against him in manner and form aforesaid, and that said pretended process, arrest, order, trial, and judgment, and warrant whereby your petitioner was committed to the custody of the said Samuel C. Bothwell, and whereby, in custody of said Samuel C. Bothwell, he is imprisoned and restrained of his liberty, as aforesaid, were and are, each and all of them, in violation of the Constitution of the United States and the just rights of your petitioner, and are without authority of law and void.

Your petitioner further alleges that said United States provisional court had no jurisdiction to try him for the alleged offense with which he is charged for the reasons following, among others:

First. Because, by the ratification of the treaty of peace hereinbefore referred to, the territory of the island of Porto Rico became a part of the territory of the United States, and the inhabitants thereof not in the military or naval service of the United States, nor in its militia in actual service in a time of war, and in the absence of any insurrection or rebellion or hostilities of any sort in said island, became and were entitled to enjoy the personal rights, privileges, and immunities guaranteed by the Constitution of the United States to all persons resident within the territory thereof.

Second. There being a state of peace in the island of Porto Rico at the time of the establishment of said provisional court and the prosecution of your petitioner therein, and the ordinary judicial tribunals of the island being open and exercising their respective jurisdictions, it was not competent or lawful to create such a tribunal as said provisional court, and said proceedings against your petitioner therein were null and void.

Third. Because no presentment or indictment by a grand jury was returned against your petitioner, whereby he was charged with an offense cognizable at law.

Fourth. Because he was denied the right of a trial by jury.

Fifth. Because the alleged offense charged against your petitioner did not constitute a misdemeanor or a crime, although he is being subjected to an infamous punishment for the alleged commission thereof.

Sixth. The elections held as aforesaid, and for the voting at which your petitioner was arrested and is now imprisoned, were without legal authority and of no validity, because such elections were not held in pursuance of the established law of the land, and the military authorities in command of said island of Puerto Rico had no such political and civil powers as authorized them or any of them to ordain and establish a form of civil government for the municipalities of said island, or to hold elections therein, or to declare the qualifications of voters thereat, or to extend to or withhold from the inhabitants the right of suffrage, and to provide punishments for the improper or illegal exercise thereof—all such matters being foreign to the executive and military branches of the Government of the United States and subject to the sole cognizance and control of the Congress.

Your petitioner further avers that more than thirty other persons, residents of said island of Porto Rico, were apprehended and tried by said provisional court upon the same or similar charges to those preferred against him, and such persons were likewise found guilty and sentenced to undergo like punishment, but the sentences of the court in such

other cases have been stayed pending the determination of your petitioner's application herein.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued out of and under the seal of this honorable court, directed to the said Samuel C. Bothwell, marshal of the said United States provisional court, at Humacoa, Porto Rico, commanding him to have the body of your petitioner, together with a return of the date and cause of his detention, before this honorable court on a day to be designated therein, and that a writ of *certiorari* issue, directed to said United States provisional court, commanding it and the judges thereof to certify and send to this court on a certain day to be therein designated a full and complete transcript of the process, record, and proceedings by and before them touching the matter of your petitioner's said arrest, detention, and imprisonment, and that your petitioner may have such full and adequate relief in the premises as to this court may seem appropriate, and that he may be discharged from said custody and imprisonment, your petitioner will ever pray, etc.

RAMON BAEZ,
By TULIO LARRINAGA.

DISTRICT OF COLUMBIA, *ss:*

Tulio Larrinaga, being duly sworn, deposes and says:

That he is an inhabitant of Porto Rico and knows the petitioner, Ramon Baez;

He has read the foregoing petition by him subscribed and knows the contents thereof, and—

That the matters and things therein stated are true of his own knowledge except as to matters therein stated on information or belief, and as to those matters he believes them to be true.

Further, this petition is signed and verified by him for and on behalf of the said Ramon Baez for the reason that

the petitioner is confined in the island of Porto Rico, and to delay this application by sending the same for the signature and affidavit of the petitioner himself would greatly retard, if not entirely defeat, the relief thereby sought to be obtained.

TULIO LARRINAGA.

Subscribed and sworn to before me this 24th day of March, A. D. 1900.

WM. CAREY JOHNSON,
[SEAL.] *Notary Public, District of Columbia.*

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
Of Counsel for Petitioner.

WASHINGTON, D. C., *March* 24, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1909.

Original, No. ——

EX PARTE: IN THE MATTER OF RAMON BAEZ, Petitioner.

Brief in Support of Application for Leave to File Petition for Writ of Habeas Corpus and Certiorari.

FREDERIC D. McKENNEY,
FRANCIS H. DEWITT,
For Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2-26-1909

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Original No......

EX PARTE: IN THE MATTER OF THE APPLICATION OF RAMON BAEZ, PETITIONER, FOR WRITS OF *HABEAS CORPUS* AND *CERTIORARI.*

Statement and Memorandum Brief in Support of Motion for Leave to File Application.

Petitioner, Ramon Baez, is one of thirty-two inhabitants of Puerto Rico who were prosecuted in the United States Provisional Court for the Department of Puerto Rico for alleged fraudulent voting at a municipal election held at the city of Guayama, Puerto Rico, October 31, 1899, under the authority and orders of the military governor commanding the United States forces in said island. The informations upon which they were tried and convicted charged them with having paid taxes in order to secure the right to vote, when, in fact, they were not "tax-payers."

Petitioner and the other thirty-one defendants were tried and convicted by the tribunal designated as above and

created by the military governor at Puerto Rico subsequent to the ratification of the treaty of peace between the United States and Spain. Said court was and is composed of one law judge, an American lawyer, and two military officers of the Fifth United States cavalry, stationed in said island. These defendants were each found guilty by the said tribunal and sentenced to a fine of ten dollars or, in default thereof, to one month's imprisonment at hard labor. The fines imposed have not been paid in any of the cases.

No presentment or indictment of a grand jury was returned against this petitioner nor any of said defendants, and the said provisional court refused them a trial by jury, though the same was duly demanded. The provisional court granted a stay of execution of sentence against petitioner to permit him to make application to this court for a writ of certiorari or other suitable process to review its action and set aside its proceedings and sentence. By agreement between the district attorney of said United States provisional court and the attorney for defendants, it was agreed that execution of sentences in the other cases should be stayed pending disposition of Baez' application.

The stay allowed petitioner elapsed on the sixteenth of this month (March), and he has been taken into actual custody, is now restrained of his liberty, and held at hard labor at Humacao by Samuel C. Bothwell, marshal of said United States provisional court, in compliance with the sentence of said tribunal.

A stay of execution of sentence has been granted by said provisional court to all of the other defendants before referred to pending a determination by this court of this case. It is apparent that the determination of the principle involved in this case will affect the right to liberty of thirty-one other persons convicted and sentenced, as was the petitioner herein.

Points.

I.

The United States provisional court was without jurisdiction to try and convict petitioner. He was held to answer for an infamous crime and was convicted thereof and is now restrained of his liberty and confined at hard labor without a presentment or indictment of a grand jury previously returned against him;—this not being a case arising in the land or naval forces or in the militia in actual service either in time of war or public danger. The ordinary civil courts of the Territory wherein he was a resident were open and exercising their ordinary jurisdictions, and therein he should have been tried, if at all.

II.

He was and is deprived of his liberty without due process of law.

III.

He did not enjoy the right to a * * * trial by an impartial jury of the district wherein the crime was committed.

IV.

He was tried and convicted of an offense unknown to the law of the land wherein he was resident.

Argument.

This court has jurisdiction to grant the writs of habeas corpus and certiorari.

"The supreme court and the circuit and district courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided

or by statute, which may be necessary to the exercise of heir respective jurisdictions, and agreeable to the principles and usages of law" (sec. 716, Rev. Stat. U. S.).

"The Supreme Court and the circuit and district courts shall have power to issue writs of *habeas corpus*" (sec. 751, Rev. Stats. U. S.).

"The writ of *habeas corpus* shall in no case extend to a prisoner in jail, *unless where he is in custody under or by color of the authority of the United States*" (sec. 753, Rev. Stats. U. S.).

The jurisdiction and authority of courts-martial or military commissions may be attacked and made the basis for *habeas corpus* before the United States Supreme Court.

In re Grimley, 137 U. S., 147.

Ex parte Milligan, 4 Wall., 2.

In case of *In re* Bonner, 151 U. S., 242, the writ of *habeas corpus* was granted by this court because a territorial court had imposed an illegal sentence upon petitioner therein. This was a direct application to this court, addressed to its original jurisdiction, and no appeal had been taken from the territorial court, though such an appeal was provided for by law. The court said:

"To deny the writ of *habeas corpus* in such a case is a virtual suspension of it; and it should constantly be borne in mind that the writ was intended as a protection of the citizen from encroachment on his liberty from any source—equally as well from the unauthorized acts of courts and judges as the unauthorized acts of individuals."

The fifth article of the Amendments requiring presentment or indictment by the grand jury against persons held to answer infamous crimes has been held to be jurisdictional.

Ex parte Bain, 121 U. S., 1.

"The Supreme Court may issue writs of certiorari in all proper cases, and will do so when the circumstances im-

peratively demand that form of interposition, *to correct excesses of jurisdiction and in the furtherance of justice.*"
In re Chetwood, 165 U. S., 443.

"It may be used as at common law."
Ibid., p. 462.

"While this branch of the court's jurisdiction would be exercised sparingly and with great caution, in cases of gravity the writ would issue."
In re Law Ow Bew, 141 U. S., 583.

I.

The United States Provisional Court was without authority or jurisdiction to try and convict petitioner, and its proceedings were null and void.

Ex parte Milligan, 4 Wall., 2, would seem to be conclusive in support of this proposition.

Petitioner is entitled to the benefit of the following constitutional provisions:

"ART. 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public debt without just compensation.

"ART. 6. In all criminal transactions, the accused shall enjoy the right to a speedy and public trial by an impartial jury in the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witnesses

against him; to have compulsory processes for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

These provisions must govern in all cases and places where personal rights are determined by the authority of the Federal Government, whether in the so-called Constitutional (Federal) courts or in some other tribunal constituted and acting under its exclusive authority. These constitutional limitations apply throughout the territorial limits of the United States, whether long established or newly extended. The provisional court and the island of Puerto Rico are under the exclusive control of the Federal Government.

By the ratification of the treaty of peace with Spain, Puerto Rico became a part of the United States territory, and the Federal Government of the United States holds and governs it subject to those limitations of the Constitution which exist in favor of all other territory of the Union.

"Every nation acquiring territory by treaty or otherwise, must hold it subject to the constitution and laws of its own government."

Pollard's Lessee *vs.* Hagan, 3 How., 225.

II.

Petitioner is entitled to the benefit of the civil-right guarantees of the Constitution and the amendments. In Reynolds *vs.* United States, 98 U. S., 145, it was assumed that the sixth amendment of the Constitution secured to the people of the Territories the right of trial by jury and criminal prosecution.

Callan *vs.* Wilson, 127 U. S., 540, 550.

Webster *vs.* Reid, 11 Howard, 437.

In the case of *Ex parte* Bollman, 4 Cranch, 75, this court discharged the petitioner from the custody of the military authorities which had arrested him in Orleans Territory

without civil warrant, on the ground that the arrest was "a very gross violation of the fourth amendment."

"It is beyond question that the provisions of the National Constitution relating to trials by jury for crimes and to criminal prosecutions apply to the Territories of the United States."

Thompson *vs.* Utah, 170 U. S., 343, 347.

The last clause of article XI of the treaty of peace, that "the civil rights and political status of the native inhabitants of the territory hereby ceded to the United States shall be determined by Congress," cannot impair or abrogate the operation of the constitutional provisions herein referred to.

"A treaty cannot change the Constitution or be held valid if it be in violation of that instrument."

The Cherokee Tobacco, 11 Wall., 616, 620.

Under the Florida treaty, the United States became possessed of the territory subject to the institutions and laws of its own government.

Pollard's Lessee *vs.* Hagan, 3 How., 212.

No different rule respecting personal rights guaranteed by the Constitution prevails in Puerto Rico from that which prevails in other territories of the United States outside of the States themselves.

"The United States, under the present Constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. * * * During the time it remains a Territory, Congress may legislate over it *within the scope of its constitutional powers in relation to citizens of the United States, and may establish a territorial government, * * * but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States in respect to their rights of person or rights of property.*"

Dred Scott *vs.* Sandford, 19 How., 393.

In Loughborough *vs.* Blake, 5 Wheaton, 317, Chief Justice Marshall, referring to the Constitution, said, in interpreting the eighth section of the first article of the Amendments:

"It extends to all places over which the Government extends. * * * United States is the name given to our great Republic which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania."

Article II of the Treaty of Peace between the United States and Spain is in part as follows:

"Spain cedes to the United States the Island of Porto Rico." * * *

By the ratification and promulgation of that treaty on April 11, 1899, the Island of Porto Rico became a part of the territory of the United States.

The power of the United States to acquire new territory does not depend upon any specific grant contained in the Constitution so to do, but flows from its sovereignty over commerce, war, and treaties.

3 Story's Com. Const., sec. 1281.

American Ins. Co. *vs.* Canter, 1 Pet., 511.

The power of the United States over conquered and ceded territory is sovereign, and exclusive of State control.

Territory acquired by conquest or treaty does not by force of the Constitution itself become entitled to self-government.

During the existence of the war or continuance of military operations in restoring peace it is governed by the military power, but when ceded by treaty, with peace in full flower, it is no longer subject to military rule.

With the transfer of the domain, the inhabitants cease to be inhabitants of the country that makes the cession.

People *vs.* Godfrey, 17 Johns., 225.

The government of the ceded territory existing prior to the cession remains until the proper legislative authority establishes another government in its stead, but with the cession—

"The military government which was established * * * under the laws of war, as recognized by the practice of all civilized nations, * * * ceased to derive its authority from this (that) source of power. * * * The termination of the war left an existing government, a government *de facto*, in full operation, and this will continue with the presumed consent of the people, until Congress shall provide for them a territorial government. The great law of necessity justifies this conclusion. * * *

"This government *de facto* will, of course, exercise no powers inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land." * * *

Mr. Buchanan, Sec'y of State. to Mr. Voorhees, October 7, 1848.

In Ins. Co. *vs.* Canter (*supra*) it was said, in respect of the treaty by which Florida was ceded to the United States:

"This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights and immunities of the citizens of the United States. *It is unnecessary to inquire whether this is not their condition, independently of stipulations.* They do not, however, participate in political power. They do not share in the government until Florida shall become a State. In the meantime Florida *continues to be territory of the United States guarded by virtue of that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States.*"

Repeated and reaffirmed in United States *vs.* Gratiot, 14 Pet., 526.

In Cross *vs.* Harrison, 16 How., 164, it was declared that "*the ratification of the treaty made California a part of the United States, and that as soon as it became so, the Territory*

became subject to the acts which were in force to regulate foreign commerce with the United States."

Von Holst (Const. History of U. S., vol. 3, p. 446), considering the debate between Webster and Calhoun on the compromise of 1850, says:

"Thus, though the territories are possessions of the United States, we shall be obliged to concur unconditionally with the Supreme Court which, in contradiction to Webster in a later decision, (Dred Scott *vs.* Sandford, *supra*) repeatedly designates them also as a 'part' of the United States. And equally incontestable is its further declaration, that the powers of the Federal Government with regard to persons and property of the citizens of the territories, cannot be other or greater than those granted it over the citizens of the States."

That Porto Rico is in a state of peace does not admit of question, and "where peace exists the laws of peace must prevail."

The Constitution of the United States is the supreme law of the land—of that "land" which comprehends Territories as well as States—territories outlying and newly acquired, as well as those of older acquisition and more near approach.

The sovereignty of the United States is coextensive with its territory. As broad and long as that territory may be or may become, the Constitution with capacious folds ever envelopes it, and wheresoe'er the Constitution doth prevail the jurisdiction of this court extends to prevent oppression and maintain the guarantees of personal rights, liberties, and immunities against the exercise of despotic power.

FREDERIC D. MCKENNEY,
FRANCIS H. DEXTER,
For the Petitioner.

MARCH 24, 1900.